

EXHIBIT 2

JAMES E. DOROSHOW (SBN 112920)
JDoroshov@FoxRothschild.com
FOX ROTHSCHILD LLP
Constellation Place
10250 Constellation Blvd, Suite 900
Los Angeles, CA 90067
Telephone: (310) 598-4150
Facsimile: (310) 556-9828

Attorneys for Defendant & Counterclaim
Plaintiff, AGELESS SERUMS LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDGE SYSTEMS LLC, a California
limited liability company,

Counterclaim Plaintiff,

v.

AGELESS SERUMS LLC, a Texas
limited liability company,

Counterclaim Defendant.

AGELESS SERUMS LLC, a Texas
limited liability company,,

Counterclaim Plaintiff,

v.

EDGE SYSTEMS LLC, a California
limited liability company,

Counterclaim Defendant.

Case No. 2:20-cv-09669

Judge: Hon. Fernando M. Olguin

**DEFENDANT AGELESS SERUMS LLC'S
ANSWER TO PLAINTIFF EDGE
SYSTEMS LLC'S COMPLAINT;
COUNTERCLAIMS**

[DEMAND FOR JURY TRIAL]

Complaint Filed: October 21, 2020

1 For its Answer to the Complaint of Edge Systems LLC (“Edge” or “Plaintiff”),
2 Defendant Ageless Serums LLC (“Ageless” or “Defendant”) responds and alleges as
3 follows:

4 **I. JURISDICTION AND VENUE**

5 1. In response to paragraph 1, Ageless admits that the Complaint purports to
6 include claims for trademark infringement, tortious interference with contractual
7 relations, and unfair competition under federal, state and common law, but denies that
8 there is any grounds or basis (factual or legal) for these claims.

9 2. In response to paragraph 2, Ageless admits the allegations in this paragraph
10 are legally accurate at this time subject to Ageless’s right to challenge jurisdiction if one
11 or more of the claims are determined to lack merit or are dismissed by this Court.

12 3. In response to paragraph 3 of the Complaint, Ageless admits that it does
13 business in California, but denies that Ageless has committed any wrongful or illegal
14 action in doing so, including, but not limited to, in a manner that infringes, interferes or
15 violates any of Edge’s claimed rights. Except as expressly admitted in this response, the
16 allegations in paragraph 3 of the Complaint are denied.

17 4. In response to paragraph 4 of the Complaint, Ageless admits that venue is
18 proper in this judicial district. Ageless otherwise denies the allegations of paragraph 4 of
19 the Complaint.

20 **II. THE PARTIES**

21 5. In response to paragraph 5 of the Complaint, Ageless lacks sufficient
22 knowledge or information to respond to the allegations in this paragraph and therefore
23 denies them at this time.

24 6. In response to paragraph 6 of the Complaint, Ageless admits that it is a
25 Texas limited liability company with a principal place of business at the address alleged.
26 Ageless lacks sufficient information or knowledge what Edge knows or believes and
27 therefore denies the balance of the remaining allegations in this paragraph.

7. In response to paragraph 7 of the Complaint, Ageless lacks sufficient information and knowledge to know what specific “acts” Edge is referring thereto and therefore denies the allegations in this paragraph at this time.

III. GENERAL ALLEGATIONS

A. Edge Trademark and Trademark Licenses

8. In response to paragraph 8 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

9. In response to paragraph 9 of the Complaint, Ageless is informed and believes that Edge designs and sells one or more of the serums described in this paragraph, but lacks sufficient knowledge or information to respond to the remaining allegations in this paragraph and therefore denies them at this time.

10. In response to paragraph 10 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

11. In response to paragraph 11 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

12. In response to paragraph 12 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

13. In response to paragraph 13 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

14. In response to paragraph 14 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

1 15. In response to paragraph 15 of the Complaint, Ageless lacks sufficient
2 knowledge or information to respond to the allegations in this paragraph and therefore
3 denies them at this time.

4 16. In response to paragraph 16 of the Complaint, Ageless lacks sufficient
5 knowledge or information to respond to the allegations in this paragraph and therefore
6 denies them at this time.

7 17. In response to paragraph 17 of the Complaint, Ageless lacks sufficient
8 knowledge or information to respond to the allegations in this paragraph and therefore
9 denies them at this time.

10 18. In response to paragraph 18 of the Complaint, Ageless lacks sufficient
11 knowledge or information to respond to the allegations in this paragraph and therefore
12 denies them at this time.

13 19. In response to paragraph 19 of the Complaint, Ageless lacks sufficient
14 knowledge or information to respond to the allegations in this paragraph and therefore
15 denies them at this time.

16 20. In response to paragraph 20 of the Complaint, Ageless lacks sufficient
17 knowledge or information to respond to the allegations in this paragraph and therefore
18 denies them at this time.

19 **B. Alleged Infringement of Edge's HydraFacial Mark**

20 21. In response to paragraph 21 of the Complaint, Ageless admits that it is in the
21 business of selling serums for use with hydadermabrasion systems. Ageless admits that it
22 promotes and sells serum that can be used as replacement for serums sold by others,
23 including Edge. Ageless denies the remaining allegations in this paragraph.

24 22. In response to paragraph 22 of the Complaint, Ageless admits that Edge
25 brought suit against Ageless in or about 2017. Ageless lacks sufficient knowledge or
26 information about when or what Edge claims to have "discovered," and denies this
27 allegation. Ageless also denies that it had done anything "improper," and therefore
28 denies the remaining allegations in this paragraph of the Complaint.

23. In response to paragraph 23 of the Complaint, Ageless lacks sufficient knowledge or information as to what “rights” Edge is referring to in the first sentence of paragraph 23 of the Complaint, and therefore denies this sentence. Ageless admits the remaining allegations of paragraph 23 of the Complaint.

24. In response to paragraph 24 of the Complaint, Ageless denies the allegations in this paragraph.

25. In response to paragraph 25 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

26. In response to paragraph 25 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations in this paragraph and therefore denies them at this time.

27. In response to paragraph 27 of the Complaint, Ageless admits the allegations in this paragraph to the extent it relates to the present.

28. In response to paragraph 28 of the Complaint, Ageless lacks sufficient knowledge or information to respond to this paragraph and therefore denies this paragraph at this time.

29. In response to paragraph 28 of the Complaint, Ageless lacks sufficient knowledge or information to respond to this paragraph and therefore denies this paragraph at this time.

30. In response to paragraph 30 of the Complaint, Ageless denies the allegations in this paragraph.

31. In response to paragraph 31 of the Complaint, Ageless admits it instructs its customers how to use Ageless Serums, but denies it instructs them to do so. Ageless admits the remaining allegations of this paragraph.

32. In response to paragraph 32 of the Complaint, Ageless denies the allegations of this paragraph. Ageless merely engages in lawful comparative advertising and promotion to demonstrate that its serum is of higher quality than serums used by Edge

1 and others.

2 33. In response to paragraph 33 of the Complaint, Ageless denies that is
3 infringing any Edge mark or misleading or instructing its customers or anyone else about
4 doing so. Ageless admits the remaining allegations in this paragraph.

5 34. In response to paragraph 34 of the Complaint, Ageless denies the allegations
6 in this paragraph.

7 35. In response to paragraph 35 of the Complaint, Ageless denies the allegations
8 in this paragraph.

9 36. In response to paragraph 36 of the Complaint, Ageless denies the allegations
10 in this paragraph.

11 37. In response to paragraph 37 of the Complaint, Ageless lacks sufficient
12 knowledge or information to respond to the allegations in the first sentence of this
13 paragraph and therefore denies them at this time. Ageless denies the remaining
14 allegations in this paragraph.

15 38. In response to paragraph 38 of the Complaint, Ageless denies the allegations
16 in this paragraph.

17 39. In response to paragraph 39 of the Complaint, Ageless denies the allegations
18 in this paragraph.

19 40. In response to paragraph 40 of the Complaint, Ageless denies the allegations
20 in this paragraph.

21 **IV. COUNT I**

22 **ALLEGED CONTRIBUTORY TRADEMARK INFRINGEMENT**

23 41. In response to paragraph 41 of the Complaint, Ageless repeats and re-alleges
24 its responses to paragraphs 1-40 of this Answer as if set forth fully herein.

25 42. In response to paragraph 42 of the Complaint, Ageless denies the allegations
26 in this paragraph.

27 43. In response to paragraph 43 of the Complaint, Ageless denies the allegations
28 in this paragraph.

44. In response to paragraph 44 of the Complaint, Ageless denies the allegations in this paragraph.

45. In response to paragraph 45 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations what Ageless's individual customers are authorized or not authorized to do and therefore denies the allegations in this paragraph, including, but not limited to, the allegation claiming what knowledge Ageless has about its customers' authorization or lack thereof.

46. In response to paragraph 46 of the Complaint, Ageless denies the allegations in this paragraph.

47. In response to paragraph 47 of the Complaint, Ageless denies the allegations in this paragraph.

48. In response to paragraph 48 of the Complaint, Ageless denies the allegations in this paragraph.

49. In response to paragraph 49 of the Complaint, Ageless denies the allegations in this paragraph.

50. In response to paragraph 50 of the Complaint, Ageless denies the allegations in this paragraph.

51. In response to paragraph 51 of the Complaint, Ageless denies the allegations in this paragraph.

52. In response to paragraph 52 of the Complaint, Ageless denies the allegations in this paragraph.

53. In response to paragraph 53 of the Complaint, Ageless denies the allegations in this paragraph.

V. COUNT II

ALLEGED FEDERAL UNFAIR COMPETITION AND CONTRIBUTORY

FALSE DESIGNATION OF ORIGIN

54. In response to paragraph 54 of the Complaint, Ageless repeats and re-alleges its responses to paragraphs 1-53 of this Answer as if set forth fully herein.

55. In response to paragraph 55 of the Complaint, Ageless denies the allegations in this paragraph.

56. In response to paragraph 56 of the Complaint, Ageless denies the allegations in this paragraph.

57. In response to paragraph 57 of the Complaint, Ageless denies the allegations in this paragraph.

58. In response to paragraph 58 of the Complaint, Ageless denies the allegations in this paragraph.

59. In response to paragraph 59 of the Complaint, Ageless denies the allegations in this paragraph.

60. In response to paragraph 60 of the Complaint, Ageless denies the allegations in this paragraph.

61. In response to paragraph 61 of the Complaint, Ageless denies the allegations in this paragraph.

VI. COUNT III

ALLEGED INDUCING BREACH OF CONTRACT

62. In response to paragraph 62 of the Complaint, Ageless repeats and re-alleges its responses to paragraphs 1-61 of this Answer as if set forth fully herein.

63. In response to paragraph 63 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations of this paragraph and therefore denies them at this time.

64. In response to paragraph 64 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations of this paragraph and therefore denies them at this time.

65. In response to paragraph 65 of the Complaint, Ageless lacks sufficient knowledge or information about the terms of Edge's alleged contracts or Trademark License Agreements with any of its individual customers or licensees in the past or present, and therefore denies the allegations in this paragraph at this time.

66. In response to paragraph 66 of the Complaint, Ageless denies the allegations in this paragraph.

67. In response to paragraph 67 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations of this paragraph and therefore denies them at this time.

68. In response to paragraph 68 of the Complaint, Ageless denies the allegations in this paragraph.

69. In response to paragraph 69 of the Complaint, Ageless denies the allegations in this paragraph.

70. In response to paragraph 70 of the Complaint, Ageless denies the allegations in this paragraph.

VII. COUNT IV

ALLEGED TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

71. In response to paragraph 71 of the Complaint, Ageless repeats and re-alleges its responses to paragraphs 1-70 of this Answer as if set forth fully herein.

72. In response to paragraph 72 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations of this paragraph and therefore denies them at this time.

73. In response to paragraph 73 of the Complaint, Ageless lacks sufficient knowledge or information to respond to the allegations of this paragraph and therefore denies them at this time.

74. In response to paragraph 74 of the Complaint, Ageless lacks sufficient knowledge or information about the allegations in the first sentence of this paragraph and therefore denies them at this time. Ageless denies the remaining allegations in this paragraph of the Complaint.

75. In response to paragraph 75 of the Complaint, Ageless lacks sufficient knowledge or information about the terms of Edge's alleged contracts or Trademark

1 License Agreements with any of its individual customers or licensees, and therefore
2 denies the allegations in this paragraph at this time.

3 76. In response to paragraph 76 of the Complaint, Ageless denies the allegations
4 in this paragraph.

5 77. In response to paragraph 77 of the Complaint, Ageless denies the allegations
6 in this paragraph.

7 78. In response to paragraph 78 of the Complaint, Ageless denies the allegations
8 in this paragraph.

9 **VIII. COUNT V**

10 **ALLEGED UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS &**
11 **PROFESSIONS CODE SECTIONS 17200 ET SEQ.**

12 79. In response to paragraph 79 of the Complaint, Ageless repeats and re-alleges
13 its responses to paragraphs 1-78 of this Answer as if set forth fully herein.

14 80. In response to paragraph 80 of the Complaint, Ageless denies the allegations
15 in this paragraph.

16 81. In response to paragraph 81 of the Complaint, Ageless denies the allegations
17 in this paragraph.

18 82. In response to paragraph 82 of the Complaint, Ageless denies the allegations
19 in this paragraph.

20 **IX. COUNT VI**

21 **ALLEGED CALIFORNIA COMMON LAW UNFAIR COMPETITION**

22 83. In response to paragraph 83 of the Complaint, Ageless repeats and re-alleges
23 its responses to paragraphs 1-82 of this Answer as if set forth fully herein.

24
25 84. In response to paragraph 84 of the Complaint, Ageless denies the allegations
26 in this paragraph.

27 85. In response to paragraph 85 of the Complaint, Ageless denies the allegations
28 in this paragraph.

86. In response to paragraph 86 of the Complaint, Ageless denies the allegations in this paragraph.

87. In response to paragraph 87 of the Complaint, Ageless denies the allegations in this paragraph.

88. In response to paragraph 88 of the Complaint, Ageless denies the allegations in this paragraph.

AFFIRMATIVE DEFENSES

By asserting these affirmative defenses, Ageless does not admit that it necessarily bears the burden of proof or persuasion for any of the defenses or issues alleged below. Moreover, at this time, Ageless has insufficient information and knowledge upon which to form a belief as to whether additional defenses are or may later become available to it. Ageless reserves the right to amend its responses to the Complaint to add, delete, or modify defenses based upon additional facts and legal theories which it may or will learn, including that which may be divulged through clarification of the Complaint, through discovery, through change or clarification of governing law, or through further analysis of Edge's allegations and claims in this litigation. Subject to the foregoing, for its affirmative defenses in this action, Ageless hereby presently asserts and alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Edge's Complaint, including one or more claims alleged therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Waiver, Estoppel, Unclean Hands, And/Or Laches)

2. The equitable doctrines of waiver, estoppel, unclean hands, and/or laches bar at least one or more of Edge's claims for damages and other relief.

///

///

THIRD AFFIRMATIVE DEFENSE

(Lack of Standing and Injury)

3. Edge lacks standing, including because it has not suffered economic injury.

FOURTH AFFIRMATIVE DEFENSE

(Absence of Irreparable Harm)

4. Edge's claims for injunctive relief are barred because Edge will not suffer any irreparable harm and has an adequate remedy at law.

FIFTH AFFIRMATIVE DEFENSE

(Inequitable Relief)

5. Edge's claims for injunctive relief are barred because such relief would be inequitable.

SIXTH AFFIRMATIVE DEFENSE

(Innocent Infringement)

6. Edge's claims for relief are barred because any alleged infringement was innocent and not willful.

SEVENTH AFFIRMATIVE DEFENSE

(Absence of Confusion)

7. Edge's claims for relief are barred because Ageless' alleged use of Edge's claimed mark is not likely to cause any form of confusion.

EIGHTH AFFIRMATIVE DEFENSE

(Fair Use)

8. Edge's claims are barred against Ageless under the fair use doctrine.

NINTH AFFIRMATIVE DEFENSE

(Unlawful Tying and Illegality)

9. One or more of Edge's claims are barred because they are illegal and constitute unlawful tying in violation of the antitrust laws.

///

///

TENTH AFFIRMATIVE DEFENSE

(No Trademark or Claim)

10. One or more of Edge’s claims are barred, in whole or in part, because Edge’s claims do not constitutes trademark infringement or give rise to any other claim alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(No Causation)

11. Ageless is not the cause of any of the claims alleged or relief sought in the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

(No Damages)

12. Edge’s claims are barred because there has been no damage in any amount by reason of any act alleged against Ageless.

THIRTEENTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

13. Ageless presently has insufficient knowledge or information on which to form a belief as to whether there may be additional, as yet unstated, affirmative defenses. Thus, subject to discovery and other proceedings and developments in this action, Ageless expressly reserves its right to assert additional affirmative defenses when and if they are appropriate.

COUNTERCLAIMS

For is Counterclaims against Counterclaim-Defendant Edge Systems LLC (“Edge”), Counterclaim Plaintiff Ageless Serums LLC (“Ageless”) states and alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. Sections 1331, 1338, 2201 and 2202, as well as the *Lanham Act*, 35 U.S.C. Sections 1051 et seq.

2. This Court has personal jurisdiction over Edge because Counterclaim-Defendant has invoked the jurisdiction of this Court by filing the Complaint herein.

3. Venue is proper in this District pursuant to *28 U.S.C. Section 1391*.

THE PARTIES

4. Counterclaimant Ageless is a limited liability corporation organized and existing under the laws of Texas with its principal place of business at 6140 Highway 6, Suite 226, Missouri City, Texas 77459.

5. Ageless is informed and believes, and thereon alleges, that Counterclaimant-Defendant Edge is a California corporation having its principal place of business at 2165 E. Spring Street, Long Beach, California 90806.

GENERAL ALLEGATIONS

6. In its Complaint, Edge maintains that “it is a worldwide leader in the design, development, manufacturer, and sale of skin resurfacing systems and rejuvenation systems, including microdermabrasion and hydradermabrasion systems.” *See* Complaint at para. 8. As part of these alleged systems, Edge claims to be able to rejuvenate skin by using a separate product which it calls a “therapeutic solution, called a ‘serum,’ that moisturizes and protects the treated skin surface.” *Id.* Edge further alleges that its “flagship system is its revolutionary HydraFacial MD[®] system, which is the premier hydradermabrasion system sold in the United States.” *Id.* Edge also alleges that “Edge’s HydraFacial MD[®] System [and other Edge hydradermabrasion systems are] so revolutionary that [they are] protected by numerous United States patents.” *Id.* Based upon these allegations and other information (including Ageless’ ownership of numerous patents in the relevant market), Ageless is informed and believes, and on that basis alleges, that Edge has market power for the HydraFacial Systems it sells in the United States, including having an advantage not shared by its competitors in the relevant market for the systems Edge alleges it sells.

7. As also alleged in the Complaint in this action (paragraph 17), Edge sells its Systems and serums to customers across the United States pursuant to “trademark

1 licensing programs,” which allows Edge’s customers-licensees to use and take advantage
2 of the HYDRAFACIAL Mark when offering and providing HydraFacial treatments,
3 provided Edge’s customers-licencees perform the treatments using exclusively Edge’s
4 HydraFacial Systems and serums. *Id.* Edge has attached to its Complaint as Exhibit 2
5 what it calls a “sample Trademark License Agreement” that it alleges it enters into with
6 its customers-licensees and demands that its customers-licensees sign as a condition of
7 selling, using and promoting Edge’s HydraFacial system and Edge’s Trademarks,
8 conditional upon “...the Licensee solely and exclusively uses Licensor’s [Edge’s] serums
9 and/or consumables in the operation of the Purchased Equipment.” *See* Compl., Exh. 2,
10 para. 1.1(a). In accord, *see id.* at para. 3.1. Should any customer-licensee fail to comply
11 with the terms of the Agreement, the license and other rights granted under the
12 Trademark License Agreement provide that the right to use Edge’s mark shall
13 immediately terminate; other rights are forfeited (including warranties); and Edge is
14 entitled to certain stated relief (including the right to collect monetary damages,
15 injunctive relief and the payment of attorney fees should it prevail in the resolution or
16 litigation of any dispute). *Id.* at paras. 1.1(a), 10.1 and 16. *See also* Complaint at para.
17 25 and 26.

18 8. For its part, Counterclaimant Ageless has designed, developed and sold
19 high-quality serums that can be used, among others, for use in the HydraFacial
20 Systems. As is its lawful right, Ageless lawfully and fairly compares in the sale of its
21 serum with serums sold by of HydraFacial and other competitors. In doing so, Ageless
22 prominently displays a notation on its website the term HydraFacial “is a trademarked
23 name and should be noted throughout the website.” By lawfully engaging in comparative
24 advertising, Ageless is not engaged in trademark infringement or violating of any right
25 (trademark or otherwise) Edge maintains it owns.

26 9. The advertisement of Ageless’ serum is not a trademark violation or
27 contribution to trademark infringement as Edge alleges in its Complaint as Ageless’ and
28 Edge’s customers-licensees are free to purchase any product they desire, and if they

1 decide to purchase Ageless' serum, Edge in fact terminates their right to use the
2 HydraFacial mark. By doing so, Edge thereby ensures that there is no trademark
3 infringement by continued use of the HydraFacial mark if customer-licensees comply
4 with the terms of the Trademark License Agreement, including but not limited to, use of
5 Edge's serums.

6 10. Nor is there any inducement by Ageless to cause Edge's customers-licensees
7 to breach any lawful term of the Trademark License Agreement or interfere with any
8 contractual relationship between Edge and its customer-licensees. By compelling Edge's
9 customers to purchase Edge's serums as a condition of purchasing conclusive Edge's
10 equipment, Edge's Trademark License Agreement is, among others, illegal because it
11 constitutes an unlawful tying agreement in violation of United States antitrust law,
12 including, but not limited to, the Sherman Act (15 U.S.C. Section 1) and the Clayton Act
13 (15 U.S.C. Section 14), as well as analogous statutes and common law doctrines under
14 state law.

15 11. Ageless is also not the cause of any decision by any customer-licensee to
16 elect to purchase another serum other than Edge's serum. This is a decision
17 independently made by the customer-licensee themselves depending, at least in part,
18 upon which serum they believe is of higher quality. There are many customer
19 testimonials attesting to the claim that customer-licensees believe Ageless' serum is
20 better and of higher quality than the serum offered by Edge.

21 12. In addition to the terms of the Trademark License Agreement, Edge has also
22 falsely represented to customers-licensees that Ageless' serum is of "lower quality" than
23 Edge's serum and should not be used by customers-licensees when purchasing and
24 operating Edge's HydraFacial equipment.

25 **I. COUNTERCLAIM COUNT I**
26 **(VIOLATION OF ANTITRUST LAWS)**

27 13. Ageless repeats and re-alleges the allegations of paragraphs 1-12 of this
28 Counterclaim as if set forth fully herein.

14. The HydraFacial equipment that Edge sells is a different and distinct product than the serum Edge sells.

15. Under the terms of the Trademark License Agreement attached to Edge's Complaint, the purchase of Edge's HydraFacial equipment is conditioned upon a customer-licensee also purchasing Edge's serums. This is a wrongful, tying agreement would voided states law.

16. Ageless is informed and believes, and on that basis alleges, that Edge has market power in the market for the equipment it sells, including the HydraFacial equipment. If for no other reason, this is evident from the allegations in Edge's Complaint, the number of Edge customers-licensees, and the monopoly Edge has created and maintained by the patents Edge owns.

17. Ageless is further informed and believes, and on that basis alleges, that because of Edge's unlawful agreements and conduct, Edge has restrained commerce, including by enabling Edge to exclude competition and, on information and belief, set pricing for the serum at higher prices than those of third parties who sell competitive products.

18. Because of Edge's unlawful and unfair conduct, Ageless is entitled to monetary damages (including compensation for pecuniary losses), as well as injunctive relief (including a court order restraining Edge from wrongful tying its separate products).

II. COUNTERCLAIM COUNT II
(UNFAIR COMPETITION UNDER FEDERAL LAW, CALIFORNIA
BUSINESS & PROFESSIONS CODE SECTIONS 17200 *et seq.*
AND COMMON LAW)

19. Ageless repeats and re-alleges the allegations of paragraphs 1-18 of this Counterclaim as if set forth fully herein.

20. Edge's conduct as alleged above, including, but not limited to, its unlawful tying and false statements about the quality of Ageless' serum, constitutes unfair

1 competition under *California Business & Professions Code Sections 17200 et seq.* and
 2 state and federal common law.

3 21. Because of Edge's unfair competitive conduct, Ageless is informed and
 4 believes, and thereon alleges, that Edge has derived and received, and will continue to
 5 derive and receive, gains, profits, and advantages from Edge's unfair competition in an
 6 amount not presently known by Ageless.

7 22. By its actions, Edge has injured and violated the rights of Ageless and has
 8 irreparably injured Ageless, and such irreparable injury will continue unless Edge is
 9 enjoined by this Court.

10 23. Ageless' willful acts of unfair competition under California common law
 11 constitute oppression, malice, defamation and false advertising. Accordingly in addition
 12 to monetary damages, Ageless is entitled to exemplary damages pursuant to *Cal. Civ.*
 13 *Code Section 3294(a)*.

14 **III. COUNTERCLAIM COUNT III**
 15 **(DEFAMATION AND FALSE ADVERTISING)**

16 24. Ageless repeats and re-alleges the allegations of paragraphs 1-23 of this
 17 Counterclaim as if fully set forth herein.

18 25. Edge's statements about Ageless and the quality of its products are false, and
 19 known to be false by Edge.

20 26. In truth, Ageless' products are not of inferior quality to Edge's serum.
 21 Ageless' serums work equally well (if not better) with Edge's equipment than Edge's
 22 serum do, and create equal, if not superior, skin care results.

23 27. Edge's acts complained of herein have caused Ageless to suffer substantial
 24 monetary loss and irreparable injury. Ageless will continue to suffer substantial loss and
 25 irreparable injury unless and until Edge is enjoined from defaming Ageless and making
 26 false statements about it.

27 28. Edge's acts complained of herein entitle Ageless to compensatory damages
 28 and, because they have been willful and deliberate, entitle Ageless to exemplary

1 damages.

2 **IV. COUNTERCLAIM COUNT IV**
3 **(TORTIOUS INTERFERENCE WITH PROSPECTIVE AND ACTUAL**
4 **ECONOMIC ADVANTAGE)**

5 29. Ageless repeats and re-alleges the allegations of paragraphs 1-28 of this
6 Counterclaim as if fully set forth herein.

7 30. Because of Edge's unlawful and unfair conduct as alleged herein, Ageless
8 has lost customers and profits, revenue and other benefits it might otherwise have
9 obtained.

10 31. Edge's acts complained of herein have caused Ageless to suffer substantial
11 monetary loss and irreparable injury. Ageless will continue to suffer substantial loss and
12 irreparable injury unless and until Edge is enjoined from continuing to interfere with
13 Ageless' ability to sell its serums to customers-licensees, actual and prospective.

14 32. Edge's acts complained of herein have been willful and deliberate, thereby
15 entitling Ageless to exemplary damages.

16 **PRAYER FOR RELIEF**

17 Wherefore, Ageless prays for entry of judgment:

- 18 1. dismissing Edge's complaint with prejudice;
19 2. declaring that Ageless has not infringed any of the Edge's asserted
20 trademarks;
21 3. declaring that Edge has no legal right in any of the Asserted Marks, or the
22 right to stop Ageless or anyone else from using such marks in internet advertising or
23 otherwise;
24 4. declaring that Ageless has not engaged in any act of unfair competition,
25 false advertising, or receipt of stolen goods;
26 5. declaring that Edge has suffered no injury, including injury to its business
27 reputation or loss of potential customers-licensees, as a result of Ageless' use of the
28 Asserted Marks;

6. enjoining Edge, as well as their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, from directly or indirectly charging infringement, or instituting any further action for infringement of the Asserted Marks or any similar marks against Ageless, its officers, directors, principals, agents, employees, or its customers-licensees;

7. finding Counter-Defendant Edge liable for Ageless' damages and requiring Edge to pay Ageless' damages in a sum to be proven at trial;

8. awarding Ageless punitive and exemplary damages against Edge;

9. awarding Ageless its reasonable attorneys' fees and costs; and

10. awarding Ageless such other and further relief as the Court deems just and proper.

Dated: November 30, 2020

FOX ROTHSCHILD LLP

By: /s/James E. Doroshow

James E. Doroshow
Attorneys for Defendant & Counterclaim
Plaintiff, AGELESS SERUMS LLC

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant Ageless hereby demands a trial by jury as to all issues properly so tried.

Dated: November 30, 2020

FOX ROTHSCHILD LLP

By: /s/James E. Doroshow

James E. Doroshow
Attorneys for Defendant & Counterclaim
Plaintiff, AGELESS SERUMS LLC